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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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SUKELE LEWIS,

98 CV 434

Petitioner,

MEMORANDUM

AND

- against -

ORDER

JOHN KEANE, Superintendent,
Woodbourne Correctional Facility,

Respondent.

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SUKELE LEWIS

88-B-0751

Woodbourne Correctional Facility

Pouch #1

Woodbourne, New York 12788

Petitioner pro se.

CHARLES J. HYNES

District Attorney, Kings County

400 Municipal Building

210 Joralemon Street

Brooklyn, New York 11201

for respondent.

NICKERSON, District Judge:

On January 23, 1998, petitioner pro se brought
this proceeding for a writ of habeas corpus challenging
his conviction pursuant to 28 U.S.C. § 2254.

When petitioner was sixteen years old, he and several other boys robbed and beat to death Ruben Concepcion. Petitioner was convicted in New York Supreme Court, Kings County, of second degree murder. He was sentenced to a term of fifteen years to life.

Petitioner appealed his judgment of conviction to the Appellate Division, Second Department. On April 9, 1990, the Appellate Division reversed petitioner's judgment of conviction because of two trial errors, and ordered a new trial.

Petitioner's second trial commenced on November 14, 1990. On November 29, 1990 he was again convicted of Murder in the Second Degree. He was sentenced to a term of imprisonment of fifteen years to life.

The conviction was affirmed by the Appellate Division on April 11, 1994. People v. Lewis, 610 N.Y.S.2d 288 (2d Dep't 1994).

Petitioner sought leave to appeal to the New York Court of Appeals. That request was denied on June 29, 1994. People v. Lewis, 616 N.Y.S.2d 21 (1994).

Petitioner's application for a writ of habeas corpus was filed with the Court on January 23, 1998. He raises seven claims: (1) guilt was not proved beyond a reasonable doubt and the verdict was against the weight of the evidence; (2) his confession was coerced and had no probative value; (3) he was not informed that he was arrested; (4) he was arrested without probable cause; (5) prosecutorial misconduct deprived him of a fair trial; (6) the trial court was required, but failed, to charge the affirmative defense to felony murder; and (7) the trial court improperly admitted written hearsay.

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Respondent seeks to have the petition dismissed as untimely under 28 U.S.C. § 2244(d)(1). The Antiterrorism and Effective Death Penalty Act (the Act), Pub. L. No. 104-132, 110 Stat. 1214, 1220 (1996), amended 28 U.S.C. § 2244 to require that a habeas petition be filed no later than one year after the date

on which a judgment of conviction becomes final by the conclusion of direct review. See 28 U.S.C. § 2244(d)(1)(A). The Act became effective on April 24, 1996.

In cases where a judgment of conviction becomes final prior to the effective date of the Act a petitioner must be accorded at least a "reasonable time" from the effective date of the Act to file a habeas petition. Peterson v. Demskie, 107 F.3d 92, 93 (2d Cir. 1997). The court in Peterson noted that in cases where a prisoner has had several years to contemplate bringing a habeas petition, it saw "no need to accord a full year" after the effective date of the Act. Id.

The conviction in this case became final on June 29, 1994. This petition was filed on January 23, 1998, twenty-one months after the Act became effective, and almost four years after the conviction became final.

The petition is untimely. The motion to dismiss is granted. A certificate of appealability is denied.

Dated: Brooklyn, New York
June 9, 1998

Eugene H. Nickerson
Eugene H. Nickerson, U.S.D.J.